

BEFORE THE  
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 582 (Sub-No. 1)  
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE  
EASTERN SHORE RAILROAD, INC.

**ENTERED**  
**Office of the Secretary**  
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**Part of**  
**Public Record**

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Dated: November 17, 2000

ORIGINAL

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BACKGROUND

By decision served October 3, 2000, the Board initiated this Notice of Proposed Rulemaking (NPRM) proceeding. If adopted, the proposed rules would represent the first major revision of the Board's Railroad Consolidation Rules, 49 CFR Part 1180 et seq. since they were last changed as a result of the 1980 Staggers Rail Act amendments to the former Interstate Commerce Act. The NPRM sets November 17, 2000, as the deadline for initial comments by interested parties, with reply and rebuttal comments due December 18, 2000, and January 11, 2001, respectively. The NPRM indicates that the Board will issue its revised final regulations on June 11, 2001.

COMMENTER'S INTEREST AND STATEMENT

Eastern shore Railroad, Inc. ("ESHR") is a class III short line railroad headquartered at Cape Charles, VA, and a quasi-public entity indirectly owned by the Accomack/Northampton Transportation District Commission ("ANTDC"), a political subdivision of the Commonwealth of Virginia.<sup>1</sup> ESHR operates a 63

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<sup>1</sup> ESHR was established in 1981 as a subsidiary of Canonic Atlantic Co. which is in turn owned by the Accomack/Northampton Transportation District Commission.

mile long line of railroad between Pocomoke City, MD, on the north, and Cape Charles, VA, on the south, as well as major rail yards at Cape Charles and Little Creek (Norfolk), VA. ESHR connects at Pocomoke City with Norfolk Southern Railroad's ("NS") Delmarva Peninsula mainline<sup>2</sup> which begins at Wilmington, DE. ESHR operates one of the only two railroad car float services extant on the Eastern Seaboard of the country<sup>3</sup> connecting Cape Charles to Little Creek and Norfolk,<sup>4</sup> where ESHR interchanges traffic with both NS and CSX Transportation. As a bridge carrier, ESHR provides a strategic rail link for the Delmarva Peninsula and the Northeastern part of the United States. In conjunction with NS' Delmarva Peninsula trackage, ESHR provides an alternative to class I railroad freight routes between the Northeast and the South, bypassing congested trackage through Baltimore, Washington, D.C., and Richmond, VA. ESHR offers shippers a direct routing free of the clearance restrictions that limit the freight handling abilities which characterize NS's and CSX's other North-South routes along the Eastern Seaboard.<sup>5</sup>

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<sup>2</sup> Formerly owned and operated by Consolidated Rail Corporation ("Conrail") and acquired by NS as part of the rail properties assumed from Conrail.

<sup>3</sup> The other is owned and operated by the New York Cross Harbor Terminal Railroad Corporation which serves the New York Metropolitan Area.

<sup>4</sup> The distance between Cape Charles and the Norfolk Area is approximately 26 miles.

<sup>5</sup> NS has operating rights over Amtrak's Northeast Corridor which has clearance restrictions due to electric catenary supports and wires as well as tunnels. CSX's Washington-Philadelphia line has tunnels through Baltimore. Both

ESHR initially participated in the Board's proceedings in FD No. 33388, involving the acquisition and partition of Conrail by NS and CSX. It eventually withdrew from active participation in those proceedings after NS and CSX expressed their desire to work with ESHR to resolve matters involving traffic and revenue-related concerns. However, its participation in the Conrail Case gave ESHR a taste of STB rail merger proceedings and a desire to ensure that railroad merger applicants and the Board would in the future consider the interests, needs, and capabilities of short line railroads generally.

ESHR filed some brief comments in the Advance NPRM identifying several issues of keen interest to it.<sup>6</sup> Now having read the Board's October 3 NPRM, ESHR supplements its previous comments with the following points:

1. The NPRM appears to raise very substantially the barriers to merger approval but it is unclear whether or to what

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lines are heavily congested with substantial passenger traffic (on CSX just south of Baltimore). CSX's line is single track north of Baltimore.

<sup>6</sup> (1) Should the Board merely preserve existing competition or actively promote new competition? (2) Should merger applicants be required to maintain existing gateways for all major routings? (3) Should the Board be able to compel interchanges over the most economical routes or via the most economical interchange points? (4) Should merger applicants be required as part of their filings to submit plans for promoting the viability of short line and regional railroads? In that regard the Board should consider the impact of traffic diversion on the viability of those short lines such as ESHR which play an important strategic role as a bridge route.

extent the Board will change existing law on granting protective conditions on competition or essential rail service. The Board needs to explain whether it will be easier for adversely affected parties to obtain relief and what types of fact situations will warrant relief.

2. The Board should formally recognize that short line and regional railroads are part of the country's transportation infrastructure and can (and have) played an important role as "congestion relievers."<sup>7</sup> Considering that many smaller railroads are very fragile financially, the Board should bend over backwards to protect them where there are merger related impacts (i.e. traffic diversion, etc.).<sup>8</sup>

3. Preservation of competition (where required as in a "2 to 1" market) is not sufficient unless it is the preservation of "effective competition." Where the Board grants another carrier rights to use a rail line, it should grant that carrier a common

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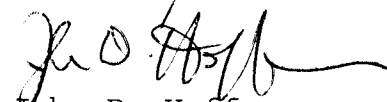
<sup>7</sup> Chairman Morgan has repeatedly noted the role which short line and regional railroads have played as congestion relievers.

<sup>8</sup> Short line and regional railroads have frequently experienced traffic diversion in railroad mergers and consolidations. In one instance involving the acquisition of Conrail by NS and CSX, a short line lost 350 cars of traffic when one of the two applicants there acquired the former Conrail route connecting with a short line railroad and rerouted the traffic around the short line. The short line complained to the class I railroad about the traffic loss and was advised that it was the off line shipper - not the class I railroad - who made the decision to reroute the traffic. ESHR believes that correct solution would be for the class I railroad to notify the short line of the shipper's rerouting request and give the short line the right to "bid on the traffic" by offering a more attractive rate.

carrier service obligation as well.

4. The Board seems to place a very heavy reliance on voluntary arrangements to resolve problems between merger applicants and potential protestants. The Board has got to recognize that parties will only be able to reach meaningful voluntary agreements in one of two situations: where the parties have equal bargaining power (which short lines generally lack) and where the Board is likely to use its regulatory power to provide relief if the parties cannot agree.

Respectfully submitted,

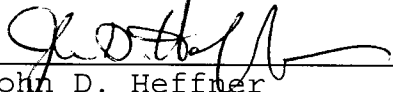


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Dated: November 17, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this the 17th day of November, 2000, served a copy of the forgoing on all known parties of record by first class U.S. Mail postage prepaid.

  
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John D. Heffner